

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA, for the
Benefit of L & A CONTRACTING
COMPANY

PLAINTIFF

VS.

CIVIL ACTION NO. 2:07-cv-57(DCB)(JMR)

FEDERAL INSURANCE COMPANY, and
BYRD BROTHERS, INC.

DEFENDANTS

ORDER

This cause came before the Court for trial by jury on June 23, 2009, and the defendant, Byrd Brothers, Inc., at the close of the plaintiff's case in chief, made a motion for judgment as a matter of law pursuant to Rule 50 of the Federal Rules of Civil Procedure, which motion was taken under advisement. Following the close of the defendant's case in chief, the defendant renewed its motion and the motion was granted.

The defendant and plaintiff had previously announced to the Court that the defendant's counterclaim for attorney's fees was an issue of law for the Court and did not require any findings of fact. The parties shall therefore be afforded an opportunity to brief their positions on the counterclaim.

The plaintiff announced to the Court that defendant Federal Insurance Company was dismissed from this action by exclusion of Federal Insurance Company from the Second Amended Complaint, filed May 1, 2008. Although Federal Insurance Company is not mentioned in the body of the Second Amended Complaint, it is included in the caption of the case along with Byrd Brothers, Inc., and the prayer

for relief seeks judgment against "the defendants" (plural). The plaintiff shall therefore be afforded an opportunity to seek dismissal of Federal Insurance Company. Accordingly,

IT IS HEREBY ORDERED that Byrd Brothers, Inc., shall file its brief in support of its counterclaim within ten (10) days following entry of this Order, with response and reply briefs being due according to normal procedure;

FURTHER ORDERED that plaintiff shall file a motion to dismiss defendant Federal Insurance Company within five (5) days from the date of entry of this Order.

SO ORDERED, this the 29th day of June, 2009.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE